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No. 90-967

In the
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Is a union member, who sues his union and its officers for money damages for violations of his free speech rights under Title I of the Labor-Management Reporting and Disclosure Act, entitled to a trial by jury under the Seventh Amendment?

2. Does section 301 of the Labor-Management Relations Act create a federal cause of action under which a union member may sue his union for a violation of the union constitution?

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the parties to this proceeding are respondents R.L. "Buck" Wooddell and Gregory Sickles.

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MISCELLANEOUS

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OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reproduced at pages A-1 to A-21 of the Appendix to the Petition for Writ of Certiorari ("Pet. App. A-1 to A-21"). The unreported opinions of the

United States District Court for the Northern District of Ohio are reproduced at Pet. App. A-24 to A-36, A-37 to A-41, and A-42 to A-63.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 1990. That court denied a timely petition for rehearing on September 4, 1990. Pet. App. A-22.

This Court has jurisdiction under 28 U.S.C. § 1254(1). Certiorari was granted on February 19, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

Trial by jury in civil cases

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, provides, in relevant part:

Suits by and against labor organizations

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2), provides:

Freedom of speech and assembly.

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 102 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412, provides, in relevant part:

> Civil action for infringement of rights; jurisdiction. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

STATEMENT

A. Facts.

Petitioner Guy Wooddell, Jr., is a member in good standing of respondent International Brotherhood of Electrical Workers ("IBEW"), Local Union No. 71. Joint Appendix ("JA") 7. His brother, respondent Buck Wooddell, was at all relevant times the President of Local 71. JA 7. Respondent Gregory Sickles has been the Business Manager of Local 71 since October 14, 1985. JA 7.

This dispute concerns the treatment of petitioner by the respondents. The trouble between the parties became apparent in January 1986 when petitioner openly opposed an announced union dues increase. In previous years, petitioner had been opposed to the selection of respondent Sickles as the Business Manager of the local and to the selection of other officers, as well. After hearing of petitioner's outspoken opposition to the dues increase, respondent Wooddell telephoned petitioner. The conversation quickly became hostile, with respondent Wooddell telling petitioner that, if he persisted in his opposition to the dues increase, he would be "finished" in the union. Pet. App. A-2, A-3.

Shortly after this conversation, respondent Wooddell filed internal union charges against petitioner. On February 24, 1986, Local 71 sent petitioner a notice informing him that he was to appear at a hearing before the union's Executive Board on March 14, 1986. Pet. App. A-3. After consulting an attorney, petitioner appeared before the board without counsel. The charges were read, petitioner was asked if he were guilty of the charges, and he said no. The two brothers then began shouting at each other and petitioner left. No decision was ever rendered on the charges. Pet. App. A-4.

Petitioner alleges that, after his opposition to the dues increase, respondents discriminated against him with respect

to job referrals, principally by manipulating the hiring hall referral system that Local 71 operates. Under the referral procedures, each member is supposed to be registered in the highest priority group in the classification for which he qualifies, and, within each group, members are supposed to be referred to work in the order in which they signed the out of work list. Petitioner fulfilled the requirements of the highest priority group for journeymen linemen, known as Group I, who are supposed to be referred before any Group II members. Group II members are to be referred before any Group III members, and so on. Pet. App. A-4 to A-5.

Respondents repeatedly referred members who were qualified only for a lower priority group, or who were not ahead of petitioner on the out of work list, to employers for employment before petitioner. JA 10. Petitioner contends that the reason for this lack of referrals was his outspoken opposition to the dues increase. After the complaint was filed in this case, petitioner received some referrals, although they were for much lower paying jobs, with far less desirable working conditions, than the referrals received by those who did not oppose the dues increase. Pet. App. A-5. Local 71 made no efforts to refer petitioner to another job until January 19, 1987, well after this action had been filed. By that time, he had already committed himself to a job in New Jersey that he had obtained himself. Pet. App. A-6.

B. Proceedings Below.

Petitioner filed this action in the United States District Court for the Northern District of Ohio on July 25, 1986. He alleged that he had engaged in internal union political activities protected by the Bill of Rights of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411, and that he had suffered retaliation because of this activity. JA 11-12. He also claimed that respondents' conduct violated

the IBEW Constitution, including the requirements for substantive and procedural protections to be afforded to members against whom internal union charges have been filed, JA 36-37, and the requirement that local unions adhere to the terms of their collective bargaining agreements with employers. JA 24. *See also* JA 33 (Constitution forbids member or officer to "wrong[] a member of the IBEW by any act or acts . . . causing him physical or economic harm"). According to petitioner, the constitution is a contract between labor organizations under either section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, or state law, JA 12, 13, and he was entitled to sue for breach of that contract. He also contended that respondents had intentionally interfered with his contractual relations in violation of state law. JA 14. Petitioner sought injunctive relief, lost wages, lost fringe benefits, compensatory damages, punitive damages, and reasonable attorneys fees, and he demanded a jury trial. JA 16.[1]

In piecemeal fashion, the district court dismantled petitioner's case. First, on March 21, 1988, the district court dismissed the section 301 breach of contract claims. Pet. App. A-33 to A-36. Second, on August 29, 1988, in an in-chambers decision, it denied petitioner the right to a jury trial on his LMRDA claims. Pet. App. A-39 to A-40. Third, on October 19, 1988, the court dismissed petitioner's LMRDA free speech claims. Pet. App. A-58 to A-62.

The court of appeals affirmed in part and reversed in part in an unpublished opinion. It reversed the district court's dismissal of petitioner's LMRDA free speech claim, which was based on the deprivation of work in retaliation for his outspoken opposition to the dues increase. In all other

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[1] Petitioner also alleged discipline without due process and a breach of the duty of fair representation. The dismissal of those claims is not pursued here.

respects, however, the court affirmed the district court. First, it determined that petitioner enjoyed no right to a jury trial on his retaliation claim. It relied exclusively upon its prior decision in *McCraw v. Plumbers*, 341 F.2d 705, 709 (6th Cir. 1985), without acknowledging either that every other court of appeals that had addressed the question had reached a contrary conclusion, and despite the fact that an intervening Sixth Circuit decision had questioned the viability of *McCraw* in light of subsequent developments in this Court's Seventh Amendment analysis. Pet. App. A-20.

Second, the court held that petitioner could not enforce his claims based on Local 71's violations of the union constitution, under either state or federal law. The court first held that section 301 does not create a federal cause of action permitting individual union members to sue to enforce the constitution. The court acknowledged that *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), had held that a union constitution is a contract between labor organizations and that section 301 creates a federal cause of action permitting one labor organization to sue another labor organization under the constitution. However, the court chose to adhere to its prior decision in *Trail v. Teamsters*, 542 F.2d 961 (6th Cir. 1976), that, even if a union constitution is a "contract between labor organizations," a suit brought by an individual member is not "a suit . . . between labor organizations" under section 301. The court distinguished *Plumbers* on the ground that there the suit had been brought by a labor organization, not an individual, and declined to consider anew the question reserved in *Plumbers*, whether such actions could be brought by individual members. Pet. App. A-11 to A-13.

At the same time, the court held that claims brought under union constitutions, although they do not arise under federal law, are subject to the dictates of federal law. The court then ruled that section 301 generally preempts claims under state law, so that state claims could not be brought to

enforce a union constitution. Pet. App. A-14 to A-15.

SUMMARY OF ARGUMENT

The fundamental flaw in the decision below is that the court mechanically applied its own precedents, without inquiring into whether subsequent developments in this Court's cases had undermined their validity.

1. With respect to the jury trial issue, the court below applied its own 1962 decision that followed the outmoded doctrine that newly created statutory rights are necessarily different from the forms of action that existed at common law at the time the Seventh Amendment was passed. This Court's more recent cases, however, look beyond the date on which the statutory right was created to determine whether the nature of the right and the nature of the remedy more closely resemble the kinds of cases that could be brought in the courts of law, in which case the parties are entitled to a trial by jury, or in the courts of equity, in which case a jury trial may be denied.

Here both the right and the remedy clearly support a jury trial. Only two Terms ago this Court determined, in the statute of limitations context, that free speech claims under the LMRDA most closely resemble personal injury actions. Such actions were brought at law, rather than equity, at the time the Seventh Amendment was adopted. Moreover, the principal relief sought here, compensatory and punitive damages, is legal rather than equitable. Finally, in passing the LMRDA, Congress chose to frame the right of action in a way that it believed would preserve the right to a jury trial, a fact which further supports the characterization of the action as legal rather than equitable.

2. The proposition that union constitutions are contracts that may be enforced in court is deeply embedded in the decisions both of this Court and of the state courts. Similarly

embedded is the proposition that individual union members may sue and be sued for breach of contract when the union constitution has been violated. The question presented here is whether such a suit may be brought under federal law pursuant to section 301.

Many of this Court's earlier decisions assumed that a suit between a member and a union is one that arises under state rather than federal law. But in 1981, this Court held that a union constitution is a "contract between labor organizations" within the meaning of section 301 of the LMRA, and that consequently one union body may sue another for breach of the constitution. In addition, the Court has long held, in the context of suits for breach of a contract between an employer and a union, that individual employees have standing to sue under section 301.

The apparent conflict between the older decisions treating suits on constitutions as based on state law, and the more recent decisions under which the union constitution is a federal law contract, is best resolved by allowing individual employees to sue under federal law. It would be intolerable for all concerned if the meaning, enforcement procedures, and remedies for violations of a union constitution depended on whether the plaintiff was an individual or a union entity. Moreover, suits seeking to enforce union constitutions typically involve issues of labor law and labor relations that peculiarly call for the application of uniform law. Finally, as in this case, suits by individual members under a union constitution commonly arise in tandem with a suit for violation of a substantive federal statute, including not only the LMRDA, but the duty of fair representation and other claims. It is far more efficient for all such claims to be brought in a single proceeding in federal court, in which all related claims can be heard together, rather than to require the contract claim to be resolved in state court if the federal statutory claim does not survive until trial.

ARGUMENT

I. A UNION MEMBER WHO SUES HIS UNION AND ITS OFFICERS FOR MONEY DAMAGES FOR VIOLATING HIS FREE SPEECH RIGHTS UNDER TITLE I OF THE LMRDA IS ENTITLED TO A TRIAL BY JURY.

In denying petitioner a jury trial on his claim for employment-related retaliation under section 101(a)(2) of the LMRDA, the lower courts relied exclusively upon *McCraw v. Plumbers*, 341 F.2d 705, 709 (6th Cir. 1965). Indeed, the court of appeals affirmed, seeing "no reason to disturb *McCraw*." Pet. App. A-20. *McCraw*, in turn, based its denial of a jury trial on two grounds. First, it held that the Seventh Amendment "has no application to cases where recovery of money damages is incident to an action seeking equitable relief," *i.e.*, reinstatement to union membership. *Id.* at 709. Second, it held that the LMRDA proceeding was statutory and, therefore, "unknown to the common law." *Ibid.*

This Court's precedents, however, have moved well beyond the outmoded analysis used by the court below. The mere fact that a cause of action was created by Congress, and thus did not exist in 1791, no longer disqualifies the action from trial by jury. *Tull v. United States*, 481 U.S. 412, 417 (1987). Rather, the Court now employs a two-part test to determine whether the Seventh Amendment guarantees the right to a jury trial. *See Tull, supra*, 418 U.S. at 417-418, and *Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782, 2790 (1989). As the Court explained in *Teamsters Local 391 v. Terry*, 110 S. Ct. 1339, 1345 (1990) (citations omitted),

> To determine whether a particular action will resolve legal rights, we examine both the nature of the issues involved and the remedy sought. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature. The second inquiry is the more important in our analysis."

The Court also emphasized that "any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *id., citing Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959), and *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). The three Justices who dissented agreed with both parts of this analysis, but would have combined them in a slightly different way.[2]

The outcome of this case, however, does not turn on a choice between these two modes of analysis. Whether treated separately or as part of a unitary analysis, both of the factors on which the Court seems to be unanimous argue strongly in favor of recognizing the right to a jury trial in free speech cases under the LMRDA, at least where damages is the principal form of relief sought, as is true here. And, indeed, every court of appeals that has considered the issue, other than the Sixth Circuit, recognizes the right to a jury trial in LMRDA cases. *Quinn v. DiGiulian*, 739 F.2d 637, 645-46

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[2] Thus, rather than treating the nature of the remedy sought as a separate test in addition to comparisons with 18th century actions, the dissenters regard the remedy as one factor to be considered in the comparison process. 110 S. Ct. at 1358. Under this analysis, the dissenters, unlike the majority, did not treat the remedy as more important than the nature of the action. Justice Brennan's concurring opinion argued that the time has come to dispense with the first prong of the historical inquiry altogether. He would decide Seventh Amendment questions solely on the basis of the relief sought, comparing it to the nature of the relief available at law or at equity in 18th century England.

(D.C. Cir. 1984); *Simmons v. Textile Workers Local 713*, 350 F.2d 1012, 1018 (4th Cir. 1985); *Boilermakers v. Braswell*, 388 F.2d 193, 197-198 (5th Cir. 1968). *See also Feltington v. Motion Picture Operators Local 306*, 605 F.2d 1251, 1257 (2d Cir. 1979).

Turning first to the most analogous cause of action, it is useful to draw on this Court's treatment of analogous state law claims for statute of limitations purposes, as at least five members of the Court did in *Teamsters Local 391 v. Terry, supra*. The plurality that joined Part III-A of the *Terry* opinion began by addressing the union's argument that the claim most closely analogous to a duty of fair representation ("DFR") claim was an action to vacate an arbitration; for that proposition, the union had relied on this Court's statute of limitations decision in *UPS v. Mitchell*, 451 U.S. 56 (1981). Although the plurality ultimately rejected the analogy on the ground that there had been no arbitration in *Terry*, 110 S. Ct. 1345-1346, and did not hold that the Seventh Amendment inquiry is the *same* as the limitations inquiry, the plurality plainly looked to this Court's limitations decisions, including not only *Mitchell* but also *DelCostello v. Teamsters*, 462 U.S. 151 (1983), in deciding how best to characterize the DFR claim in *Terry*. *See also* 110 S. Ct. at 1346, 1347 n.7. Similarly, Justice Stevens, who did not join Part III-A, relied heavily on his previous opinion in *Mitchell*, stating that a DFR claim is most closely analogous to an attorney malpractice action for statute of limitations purposes, in deciding how best to characterize the claim for Seventh Amendment purposes. *Id.* at 1353-1354. [3]

This Court has recently had occasion to address the proper limitations period for LMRDA actions like this one.

[3] Neither the dissenters nor Justice Brennan, who would have ignored the "nature of the right" aspect of the inquiry, made any mention of the limitations cases.

In *Reed v. UTU*, 488 U.S. 319 (1989), a union official had sued for denial of reimbursements for "time lost" while carrying out his union duties, claiming that these replacement wages had been denied in retaliation for his exercise of his free speech rights in criticizing the local's president. This Court had no difficulty rejecting the union's claim that the limitations period should be the same as in DFR actions, where the Court has borrowed the six-month limitations period in section 10(b) of the National Labor Relations Act, and decided instead that the most analogous claim is one for personal injuries. *Id.* at 326-327. Therefore, applying the analogy used for limitations purposes to the Seventh Amendment inquiry, and because personal injury actions are one of the prototypical kinds of actions to which the Seventh Amendment applies, James, *Right to a Jury Trial in Civil Actions*, 72 Yale L.J. 655, 668 (1963), the right to a jury trial is available here.[4]

Even apart from the statute of limitations analogy, this Court has held that, where a federal "statute merely defines a new duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach," the action "sounds basically in tort," and the right to a jury trial is protected by the Seventh Amendment. *Curtis v. Loether*, 415 U.S. 189, 195 (1974). Similarly, here, in the Union Member's Bill of Rights, Congress defined a new duty

[4] There were ten principal common law actions including trespass on the case (commonly referred to simply as "case"). Trespass on the case was an action to recover damages for wrongful acts not within the scope of other actions (and not breaches of contract) which cause injury without direct physical interference with person or property. Examples of such actions include libel, slander, nuisance and deceit. Pound, Readings on the History and System of the Common Law 349-350 (1921) (quoting Maitland, Lectures on the Forms of Action at Common Law). The action for Trespass on the Case is most analogous to the modern day personal injury tort action.

for unions vis-a-vis their members, and this action for damages also "sounds basically in tort." Consequently, the Seventh Amendment guarantees petitioner the right to a jury trial.

Turning to the nature of the relief sought in this case (as authorized by the LMRDA), petitioner's principal claim is for compensatory and punitive damages. His contention is that, because he expressed his views, respondents retaliated against him by denying him job referrals and referring him to undesirable positions. Petitioner seeks money damages to compensate him both for these lost wages and benefits, for the emotional distress that was caused by the denial of his livelihood, and for the damage to his reputation, JA 10, as well as punitive damages. JA 15. Because monetary relief was "the traditional form of relief available in the courts of law," *Curtis v. Loether*, 415 U.S. at 196, the compensatory and punitive damages sought here are plainly legal, rather than equitable.

This Court has made clear that at least some of the damages sought in this case are available under the LMRDA. In *Boilermakers v. Hardeman*, 401 U.S. 233 (1971), the question was whether the National Labor Relations Act preempted a Title I claim because the plaintiff was seeking damages for loss of employment caused by the union's Title I violation, rather than an injunction. This Court rejected the preemption claim, because Congress had contemplated that damages would be a proper form of relief under section 102, *id.* at 239-240, and where "Congress has said that he is entitled to damages for the consequences of" the Title I violation, a union member's claim for such damages can scarcely be said to be preempted. *Id.* at 241. Moreover, the types of damages sought here, in addition to lost wages and benefits, are all available in appropriate Title I actions. Although the questions remain open in this Court, the circuits are unanimous in

allowing damages for emotional distress[5] and punitive damages.[6]

The fact that petitioner seeks injunctive relief, in addition to his damages claims, does not deprive him of his Seventh Amendment right to a jury trial. When both equitable and legal relief are sought, the Seventh Amendment guarantees the right to a jury trial unless the legal relief sought is merely incidental to claims for equitable relief that predominate. *Tull, supra*, 481 U.S. at 424-425. In *McCraw*, for example, the Sixth Circuit denied a jury trial because it treated the claim there as being primarily directed at obtaining an injunction compelling reinstatement to membership, with damages being merely incidental and, according to that

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[5] *Guidry v. Operating Engineers Local 406*, 882 F.2d 929, 943-944 (5th Cir. 1989); *Rodonich v. Laborers Local 95*, 817 F.2d 967, 977-978 (2d Cir. 1987); *Murphy v. Operating Engineers Local 18*, 774 F.2d 114, 126 (6th Cir. 1985); *Bise v. IBEW Local 1969*, 618 F.2d 1299, 1305 (9th Cir. 1979); *Simmons v. Textile Workers Local 713*, 350 F.2d 1012, 1020 (4th Cir. 1965). Damages may also be awarded for injury to reputation. *Rosario v. ILGWU Local 10*, 605 F.2d 1228, 1245 (2d Cir. 1979); *Simmons v. Textile Workers*, *supra*, 350 F.2d at 1020.

[6] *Guidry v.Operating Engineers Local 406*, 882 F.2d 929, 942-943 (5th Cir. 1989); *Quinn v. DiGiulian*, 739 F.2d 637 (D.C. Cir. 1984); *Parker v. Steelworkers Local 1466*, 642 F.2d 104, 107 (5th Cir. 1981); *Bise v. IBEW Local 1969*, 618 F.2d 1299, 1305 n.6 (9th Cir. 1979); *Schmid v. Carpenters*, 827 F.2d 384, 386 (8th Cir. 1987). *See also Petramale v. Laborers Local 17*, 847 F.2d 1009, 1013-1014 (2d Cir. 1988). The Sixth Circuit has characterized its own decision in *McCraw* as one that appears to forbid punitive damages, while at the same time questioning whether that prohibition remains good law. *Shimman v. Frank*, 625 F.2d 80, 101 (6th Cir. 1980). In fact, *McCraw* does not even address the issue of punitive damages. This Court treated the issue of punitive damages under the LMRDA as an open question in *IBEW v. Foust*, 442 U.S. 42, 47 n.9 (1979).

court, unavailable on the facts of that case. 341 F.2d at 709-710.

In this case, however, the principal form of relief sought is monetary damages, and it is the injunctive relief (restoring him to Group I and barring future hiring hall discrimination, JA 14) that is incidental to the damages, rather than the other way around. Indeed, as this Court has previously noted, "§ 102 contemplates that damages will be the usual, and injunctions the extraordinary form of relief" in Title I cases. *Boilermakers v. Hardeman*, 401 U.S. at 240. Accordingly, jury trials should be the rule, rather than the exception, in cases such as this.

Nor does the fact that some of the damages sought here are for lost wages make the claim equitable rather than legal. Some cases, especially in the Title VII context, have treated back pay as a restitutionary incident to an order reinstating the plaintiff to a job from which he has been terminated. Here, however, the union cannot reinstate petitioner to any job to which it failed to refer him, and the money sought is damages from the union to compensate petitioner for the loss of income from the employers to whose jobs he was not referred, rather than restitution of wages which the union itself should have paid him. The economic relief here is virtually equivalent to the damages sought from the union in *Teamsters Local 391 v. Terry*, *supra*, which were held to be legal and which thus entitled Terry to a jury trial. 110 S. Ct. at 1348-1349.

There is a final consideration which supports a conclusion that the nature of this action is legal: the care taken by Congress to ensure the right to a jury trial in Title I cases. As originally proposed on the Senate floor, as part of the "McClellan Amendment" to the bill reported by the Senate Committee on Labor and Public Welfare, section 102 (then numbered section 103) would have been enforced by the Secretary of Labor, and restraining orders would have been

a key feature of the relief available. The principal objection to this part of the McClellan Amendment was that such an enforcement scheme would deprive both the unions and their members of the right to trial by jury. 2 NLRB, *Legislative History of the LMRDA* 1111-1114 (1959). The McClellan Amendment narrowly passed by a vote of 47-46, but three days later the Senate adopted a substitute amendment, authored by Senator Kuchel, by an overwhelming margin. "One of the major changes in the proposal," *id.* at 1232, was in section 103. As Senator Kuchel explained, *id.* at 1230,

> our amendment provides for deleting from the McClellan amendment the provision for the right of the Secretary of Labor to seek an injunction when any of the rights enumerated are alleged to have been violated. In such circumstances, our amendment gives to a union member who alleges such a grievance the right to go into the Federal court for appropriate relief.

Although the jury trial issue was not mentioned at this time as the reason for the change, it is fair to infer from the nature of the objections mounted against the McClellan Amendment that the reason for the change was that the Senate wanted to deemphasize both injunctions as a form of relief, and the Secretary of Labor as the enforcement agent, in order to ensure that the right to a jury trial would be retained.

This legislative history is relevant here in two ways. First, although Congress cannot defeat the right to a jury trial by labeling relief as equitable rather than legal, the fact that Congress was trying to create an enforcement scheme that preserved the right to a jury trial is surely relevant in deciding whether the rights and remedies in this case are legal rather than equitable. Second, although the first Question Presented in the petition is based on the Seventh Amendment,

the Court can avoid reaching that constitutional question if it decides that there is a statutory right to a jury trial. *See Teamsters Local 391 v. Terry*, 110 S. Ct. 1339, 1344 n.3 (1990) (looking first to statute to see whether Seventh Amendment question could be avoided); *Boynton v. Virginia*, 364 U.S. 454, 457 (1960) (resolving statutory issue not presented by petition in order to avoid constitutional question); *Fry v. United States*, 421 U.S. 542, 545 n.5 (1975) (same).

The Bill of Rights of Union Members was modeled after the Bill of Rights of the United States Constitution, and it was intended to democratize labor unions. One of the basic rights that makes the American system of justice more democratic than virtually any in the world is the right to a jury trial, guaranteed by the Seventh Amendment. It would be more than ironic, particularly in the bicentennial year of our Constitution's Bill of Rights, were the Court to hold that union members who bring suit under their statutory Bill of Rights are not entitled to a trial by jury under our nation's Bill of Rights. Both the rights asserted and the remedies sought here are legal rather than equitable, and petitioner should therefore be allowed a jury trial on his Title I claim.

II. A UNION MEMBER MAY SUE TO ENFORCE HIS UNION'S CONSTITUTION UNDER SECTION 301.

As Justice Frankfurter has written, the proposition that a union constitution is a contract, and that violations of the constitution may be remedied by a suit for breach of contract, "widely prevails in this country," *Machinists v. Gonzalez*, 356 U.S. 617, 618 (1958), and is deeply embedded in this Court's precedents. Similarly embedded is the proposition that individuals may sue over a breach of that contract. Suits for breach of contract based on the union constitution have been permitted in such disparate circumstances as where the member contends that the union has imposed discipline in a manner

not permitted by the constitution, *id.*, where the union seeks to collect a fine that has been imposed for the member's violation of the constitution, *NLRB v. Boeing Co.*, 412 U.S. 67, 75-76 (1972), where a subordinate union entity seeks to prevent a national union from merging it into another subordinate entity, *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981), and where a national union seeks to enforce financial or trusteeship provisions against a rebellious subordinate. *E.g.*, *Letter Carriers v. Sombrotto*, 449 F.2d 915, 918 (2d Cir. 1971).

The question in this case is whether federal law, specifically section 301 of the Labor-Management Relations Act, creates a cause of action when the individual union member sues for breach of that contract. This question has never been squarely presented to this Court, although there have been a number of earlier cases in which the Court has assumed that the proper forum for enforcement of the contract by or against an individual member would be a state court. *E.g.*, *Gonzalez* and *Boeing*, *supra*. *See also Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971) (suit brought under state law but National Labor Relations Act held to preempt that claim). However, in 1981, in *Plumbers*, *supra*, the Court decided that federal law governs when a subordinate union sues its parent international. Accordingly, the question here is whether *Plumbers*' holding or the dictum in the earlier cases should control and thus whether state rather than federal law should govern when it is the individual member who brings the suit.

In order to explain why the same law should govern both when a suit is between union entities and when the case is between a union body and individuals, we begin by reviewing the Court's reasoning in *Plumbers*, and then show why that same reasoning applies here. We then explain that the language of the statute admits of no distinctions between suits between unions and suits between unions and their members,

and conclude by describing the host of practical problems that would be caused by holding that intra-union suits may only be brought under state law.

In *Plumbers*, a local union sued in state court to prevent its parent international from splitting its members into two groups (plumbers and pipefitters), and merging those two groups into two separate locals (one a plumbers local, one a pipefitters local) comprised of the members of eight other pre-existing locals. The local contended that the union constitution forbade division of a local's membership into separate work classifications, and that the international had abused its discretion in ordering the consolidation. It sought injunctive relief both to protect its charter as an autonomous local union and to prevent its members from suffering the intra-union discipline of expulsion. The international removed the case to federal court on the ground that the claim arose under section 301, and this Court upheld both the jurisdictional claim and the conclusion that federal law governed the claim.

The Court first noted that there was virtually no legislative history concerning the question whether a union constitution is a "contract between labor organizations" within section 301, but that the statutory term was plainly broad enough to include union constitutions. 452 U.S. at 619-620. Moreover, the Court took note of the many cases, including those like *Gonzalez* involving suits by individuals against the union, that treated union constitutions as contracts. *Id.* at 621-622. The Court rejected the contention that federal jurisdiction would be available, and federal law would apply, only when there was a specific assertion that the particular dispute could have a significant impact on stability in labor-management relations, for two reasons. First, although the overall purpose of the LMRA was to promote industrial peace, Congress could well have concluded that promoting union responsibility, by forcing unions to live up to all of their

promises, including their agreements among themselves, would promote labor peace. Second, the words used by Congress were broad, and not limited by a case-by-case requirement of impact on labor peace:

> Since union constitutions were probably the most commonplace form of contracts between labor organizations when the Taft-Hartley Act was enacted (and probably still are today), and Congress was obviously familiar with their existence and importance, we cannot believe that Congress would have used the unqualified term "contract" without intending to encompass that category of contracts represented by union constitutions. Nothing in the language and legislative history of § 301(a) suggests any special qualification or limitation on its reach, and we decline to interpose one ourselves.
>
> *Id.* at 624-625.

This reasoning is fully applicable to suits by individual members against their unions, because the constitution is as much a contract between labor organizations when the member sues as when a local sues, and because the statute no more imposes a requirement that an impact on labor relations be shown when the plaintiff is a member than it does where a union is the plaintiff. Accordingly, although the Court expressly reserved the question of whether individual members could sue under section 301 to enforce the union constitution, *id.* at 627 n.16, every circuit that has addressed the question in a published decision since *Plumbers* has held that individual members as well as unions may sue under section 301. *DeSantiago v. Laborers Local 1140*, 914 F.2d 125, 127-128 (8th Cir. 1990); *Pruitt v. Carpenters Local 225*, 893 F.2d 1216, 1218-19 (11th Cir. 1990); *Lewis v. Teamsters Local 771*, 826

F.2d 1310, 1312-1314 (3d Cir. 1987); *Kinney v. IBEW*, 669 F.2d 1222, 1229 (9th Cir. 1981); *see also Abrams v. Carrier Corp.*, 434 F.2d 1234, 1247-1248 (2d Cir. 1970).

There are several reasons why the decision below cannot be reconciled with this Court's decisions under section 301 and, in particular, with the analysis of *Plumbers*. First, this Court has long recognized that an individual union member can enforce his rights under section 301 contracts other than the union constitution. *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). *See also Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 25, n. 28 (1983) (Court has "not taken a restrictive view of who may sue under section 301 for violations of such contracts"). In *Smith*, the question was whether an individual could sue to enforce those aspects of a collective bargaining agreement that protected his individual terms and conditions of employment. It was argued that section 301 was only concerned with the parts of a collective bargaining agreement that concerned the rights of the union as an institution and the rights of employers. That argument was rejected because the rights of individuals are a major focus of collective bargaining agreements and there is no basis in the statute for excluding claims about such rights from the ambit of section 301. 371 U.S. at 200. So in the case of a union constitution, many of its most important provisions concern the rights and responsibilities of individual union members, and section 301 does not distinguish between the parts of union constitutions that may be enforced under federal law and those whose enforcement should be left to the vagaries of state law.

The Court also rejected the claim in *Smith* that only the union itself could sue to enforce the individual rights in a collective bargaining agreement. The employer had argued that the word "between" in section 301 referred to "suits" rather than "contracts", and that section 301 only allowed suits between unions and employers. This Court rejected that

argument as well, holding that section 301 governs suits, by and against whomever, to enforce any contracts that are within its ambit. *Id.* at 200-201. So, here, a suit brought by an individual to enforce a contract between labor organizations, known as a union constitution, should be governed by section 301 no matter who brings or defends it. There is no reason on the face of the statute or under the principles of federal labor law why an individual union member should be permitted to sue to enforce an agreement between a labor organization and an employer, but not an agreement between two labor organizations of which he is a member. Thus, read together, *Smith* and *Plumbers* strongly suggest that a union member's suit alleging violations of a union constitution is actionable under section 301.

As this Court has observed, in cases involving union constitutions, "the substantive law to be applied 'is the federal law, which the courts must fashion from the policy of our national labor laws.'" *Plumbers, supra*, 452 U.S. at 627, citing *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). That principle fully applies here. Indeed, a contrary conclusion could create a variety of practical problems for the administration of union constitutions. Such constitutions determine the way in which national unions will be governed, the manner of ratification of collective bargaining agreements, and the rights and responsibilities of members when unions are involved in collective bargaining with or economic warfare against employers. Constitutions also cover the manner in which unions will handle their responsibilities with respect to referrals to employment through hiring halls, and a host of other issues closely tied to labor relations matters with respect to which federal law has normally been paramount. If the enforcement of a union constitution were governed by state rather than federal law, then both its meaning and the remedies for its violation would also be governed by state law, and could be different in each of the

fifty states.

For example, if there were a dispute about whether a collective bargaining agreement had been properly ratified, the ratification might be deemed proper in Pennsylvania but not in New Jersey. Or if the question were whether the constitution allows discipline of members who refuse to perform picket duty, a union whose striking members lived in Connecticut and New York might be subjected to widely varying requirements and might have widely varying remedies for violations of their constitutional rights, making it difficult for either the union or the employer to predict the impact of their economic weapons and thus to settle a bargaining dispute in light of its likely outcome. Or if the dispute were over the relative powers of the members of a union's executive board, the validity of a wide range of union decisions could depend on whether suit were brought by executive board members who lived in Missouri or those who lived across the river in Illinois.

For these reasons, as in the case of suits to enforce collective bargaining agreements, suits seeking to enforce union constitutions involve issues of labor law and labor relations that "peculiarly call[] for uniform law." *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). It would certainly seem desirable from a policy perspective to have adjudications involving such issues made uniformly under federal law rather than haphazardly under state law in the courts of all fifty states. *See generally Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). "To exclude these claims from the ambit of § 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News Ass'n*, 371 U.S. at 200. The need for such uniformity is consistent with long established principles in the area of labor relations law.[7]

Moreover, in light of this Court's holding in *Plumbers* that union constitutions are enforceable under section 301 when a union is a plaintiff, the effect of holding that they are not enforceable under section 301 when an individual member is a plaintiff will be that the applicability of federal law principles will depend on the identity of the party who files the claim (or, perhaps, who files first). The inevitable result of this holding will be that the same clause of the same constitution may be given different meanings, depending on the identity of the plaintiff in a particular case, and the remedies for the same violation of any given provision may also differ, depending on who happens to be the plaintiff. Consequently, those who seek to enforce a union constitution could shop for the most favorable forum by choosing the plaintiffs in whose name contract enforcement is sought, thus enabling the action to be brought under state law or under federal law. The possibility of differing meanings and remedies, based on the identity of the plaintiff and, thus, the choice of law, would create an intolerable uncertainty about the meaning and effect of union constitutions that would surely undermine stable labor relations.

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[7] A holding that section 301 creates a federal cause of action to enforce union constitutions does not necessarily mean that all section 301 enforcement principles pertaining to collective bargaining agreements necessarily apply to constitutions. For example, the doctrine of "complete preemption," whereby the preemptive effect of section 301 is so strong as to make state claims to enforce a collective bargaining agreement removable to federal court, *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 23-24 (1983), may not apply to union constitutions. These questions are not presented here, however. Similarly, and as in *Plumbers*, the Court need not decide whether, or to what extent, the source of the federal law to be applied will be the law of the several states. *See Plumbers*, 452 U.S. at 627.

For example, in *Plumbers*, one of the claims advanced by Local 334 on behalf of its members was that they were being disciplined in a manner forbidden by the union constitution. If the holding below is correct, the individual members might have decided that the federal law that is to be applied under section 301, with respect to either the construction of contracts or the remedies available for breach, was less advantageous than the law of the state in which some of those members lived. They could have brought their own claims under state law, and, indeed, different members of the same local might succeed or fail in their claims that they were disciplined improperly. And, even more troubling, an order consolidating nine locals could have been held to have improper disciplinary impact on the members of some locals, but not others, thus wreaking havoc with the international's ability to predict its success in carrying out the consolidation that it deemed necessary to further the bargaining aims of plumbers and pipefitters in the construction industry in a particular region of the country.

This problem is, of course, not unique to unions. Many national institutions have contractual and other relationships with persons throughout the country, and might be said to benefit from the advantages of a single body of federal law to govern their relationships. Yet corporations, for example, are not entitled to uniformity in the construction of franchise or supply agreements; nor are unions or employers entitled to have state statutory or common law causes of action relating to working conditions treated as claims under section 301, unless those claims depend on a collective bargaining agreement. *Lingle v. Norge*, 486 U.S. 399 (1988); *cf. Steelworkers v. Rawson*, 110 S. Ct. 1904 (1990). However, where Congress has directed that suits over contracts between labor organizations are to be governed by section 301, there is no reason to avoid treating union constitutions as section 301 contracts, simply because it is a member rather than a union

entity that is bringing the action.

A further problem arises because questions of union constitutional interpretation are often intertwined with the enforcement of federal labor statutes. In the LMRDA alone, for example, union constitutional issues are implicated in making decisions under four of the five substantive titles. In Title I, sections 101(a)(1) and 101(a)(2) both subject the rights they create -- the equal right to vote and the right of free speech -- to "reasonable rules" in the union's constitution and bylaws; certain dues claims under section 101(a)(3)(B) turn on the presence of authority in the union constitution. In Title III, trusteeships may only be imposed in accordance with the union's constitution, section 302, and the presumption of validity of a trusteeship depends on whether it has been imposed consistent with the requirements of the union's constitution. Section 304(c). In Title IV, unions are required to comply with their own constitutions regarding elections, sections 401(e) and (f), and a variety of rights, such as the right of every member in good standing to run for office, section 401(e), are made subject to restrictions in the union's constitution if those restrictions are reasonable. And the fiduciary obligation codified by Title V requires, in part, that a union's funds be expended in accordance with its constitution. Section 501(a).

In enforcing all of these provisions in cases involving the claims of individual union members, the courts have often assumed that the meaning of the union's constitution is a question of federal law. *E.g.*, *Monzillo v. Biller*, 735 F.2d 1456, 1458 (D.C. Cir. 1984) (Title V); *Vestal v. Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971) (Title III). Indeed, because the constitution is so intertwined with the substantive question, it is not uncommon for the LMRDA claim to be accompanied by a claim for breach of the union constitution. But if state law were to govern the meaning of the constitution in such cases, the application of all of these Titles might vary from state to

state, a result that would scarcely serve either the interest in stable labor relations, or the interest in giving the rights and responsibilities created by these titles a uniform application throughout the country.[8]

Additionally, a holding that constitutional claims that are intertwined with such federal statutory claims arise solely under state law would lead to less efficient resolution of the dispute between the parties. Frequently, a court will decide before trial that the federal statutory claim fails, and yet under *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966), the presumption is that when the federal claim is dismissed before trial, any pendent state law claims should be dismissed (or remanded to state court, if the case was removed to federal court). Given the frequency with which constitutional claims are brought in tandem with statutory ones, it would be more efficient if all such claims could be resolved in the same forum.

In summary, the decisions of the lower courts in this case are incorrect. *Plumbers* and *Smith*, when read together, particularly in the context of the practical problems that would be created by the Sixth Circuit's rule, dictate that a union member be allowed to sue his union in federal court under the principles of federal law under section 301 for violations of the union constitution.

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[8] Admittedly, the question presented, as redrafted by this Court, concerns only whether there is a federal cause of action under section 301. But it hardly seems likely that union constitutions could be governed by state law when suit is brought by a member without reference to any statutory right, but by federal law when the constitutional question arises in the context of a member's LMRDA claim.

CONCLUSION

The judgment of the court of appeals denying the right to jury trial and affirming the dismissal of the claim on the union constitution should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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